Supreme Court, U.S.
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No. 94-528

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

DONALD HAYDOO, *et al.*,

Petitioners,

v.

GENERAL ELECTRIC COMPANY, JOHN F. WELCH, JR.,; INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, TECHNICAL AND SALARIED WORKERS, AFL-CIO and GENERAL ELECTRIC PENSION FUND BOARD,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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PARTIES

Petitioners are correctly identified in the Petition. Respondents are the General Electric Company, (hereinafter "General Electric"); the General Electric Company Pension Board, (hereinafter "Pension Board"); John F. Welch, Jr., (hereinafter "Welch"); and the International Union of Electronic, Electrical, Technical Salaried and Machine Workers, AFL-CIO, (hereinafter "IUE"). General Electric, the corporate defendant, does not have a parent company. Its subsidiaries with publicly held equity securities are: General Electric Capital Corporation, Montgomery Ward & Co., Inc., General Electric Capital Preferred Asset Corporation, and CAMCO, Inc., (Canada). Its subsidiaries with publically held debt securities are: General Electric Capital Services, Inc., GECC Financial Corporation (Hawaii), General Electric Capital Canada, Inc., General Electric Credit International, N.V., GNA Corporation, Mercur Bank (Austria), Imaging Financial Services, Inc., and Dart & Kraft Leasing Corporation. Further, it must be noted that the Pension Board is an unincorporated group of General Electric employees who have certain administrative responsibilities regarding the General Electric Pension Plan; it is not a separate legal entity and lacks capacity to sue or be sued.

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OPINIONS BELOW

In addition to opinions cited at page 2 of the Petition, Respondents submit that the Court's December 30, 1992 Memorandum Opinion and Order dismissing the case, (Appendix to Petition at 60a), and the Magistrate's June 27, 1991 Report and Recommendation recommending dismissal, (Appendix to Petition at 62a), are relevant to this matter.

JURISDICTION

Respondents General Electric, Welch and Pension Board agree with petitioner's Statement of Jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions quoted in the Petition include the only pertinent provision, which is Rule 41(b) of the Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

Petitioners in this case are one hundred and ten (110) former employees of General Electric's Cleveland Equipment Plant, which closed in December 1987. Respondents are the General Electric Company, ("General Electric"), John F. Welch, Jr., (General Electric's Chief Executive Officer and Chairman of the Board), the General Electric Company Pension Board, ("Pension Board"), and the International Union of Electronic, Electrical, Technical and Salaried Workers, AFL-CIO, ("IUE").

The Complaint was filed by ten plaintiffs in state court in December 1988. The case was promptly removed to the United States District Court for the Northern District of Ohio, Eastern Division. Shortly thereafter the First Amended Complaint was filed, principally to add 100 additional named plaintiffs. Both the Complaint and First Amended Complaint contained ten counts -- nine Counts challenging General Electric's decision to close the plant on various state and federal law theories, and one count asserting that the IUE breached its duty of fair representation, apparently because it was unable to stop the plant closing.

From the outset, Petitioners engaged in a course of dilatory and obstructionist conduct which is detailed in the Opinion of the Court of Appeals, (Appendix A to Petition at 1a-11a). These events culminated in the Magistrate's June 27, 1991 recommendation that "defendants' motions for summary judgment be granted for want of opposition," (Appendix H to Petition at 62a). This recommendation was "adopted and approved" by Chief Judge Thomas Lambros on December 30, 1992 because of "dilatory management of the case" by plaintiffs' counsel, (Appendix G to Petition at 60a). However, the December 30, 1992 Memorandum Opinion went on to state that the "Court will *consider* reinstating the case, within 30 days of this Order, upon motion by plaintiff certifying that all briefing has been completed, all discovery requests complied with, and that in the future counsel will attend to all time-lines established for case management." (Appendix G to Petition at 61a, emphasis supplied.)

In response, Petitioners filed a short, conclusory motion, signed by an attorney in the office of Petitioners'

lead counsel. The motion stated that lead counsel Daniel Todt would be temporarily unable to participate in the action due to unspecified "international commitments." However, it went on to assure the Court in conclusory fashion that "in the future all time-lines established for case management will be met by Plaintiffs and that procedures will be established to ensure that similar situations will not occur in the future." (Appendix J to Petition at 68a.)

The Court deemed this cursory response insufficient, and dismissed the case on February 25, 1993. The Court reiterated that "plaintiffs' counsel in this case had ample opportunity to be heard" and that his "dilatory management of this case cannot be overlooked." (Appendix D to Petition at 47a.) Then, noting that "Mr. Todt, as lead counsel, cannot make the commitments or sign the certification" required by the December 1992 Order, the Court entered judgment against Petitioners.

On appeal, the United States Court for the Sixth Circuit affirmed. Its affirmance was *not* based on the signature issue raised by the Question Presented in the Petition. Rather, the Court of Appeals held:

> Here, the district court gave the Plaintiffs notice their action was in jeopardy. The clear record of delay is undeniable. For over three years, Plaintiffs missed deadlines, filed inadequate motions and responses, and disregarded specific orders from the magistrate judge....Although the magistrate judge showed considerable patience and tried to guide Plaintiffs in amending their filings, the Plaintiffs

> never complied with the magistrate judge's suggestions about how to plead a meritorious case.
>
> Finally, after the magistrate judge had granted three extensions based on questionable excuses, he imposed a final inflexible deadline that Plaintiffs ignored....
>
> Plaintiffs engaged in over three years of missed deadlines. Further, the documents Plaintiffs filed were woefully inadequate. Under the circumstances and history of this case, the dismissal was not an abuse of discretion.

A Motion for Rehearing, with Suggestion for Rehearing En Banc, was denied, and this Petition was filed. The Question Presented in the Petition *does not challenge* the findings of dilatory conduct and "woefully inadequate" filings. It is not directed to the rationale for the Magistrate's dismissal recommendation, or to the pattern of "dilatory management" to which the District Court alluded in both its December 1992 and February 1993 Orders, or to the stated reasons for the Court of Appeals' decision affirming dismissal. Rather, it focuses solely on the District Court's statement that Petitioners' lead counsel could not even be bothered to sign the motion for reinstatement of the case.

REASONS FOR DENYING THE WRIT

The Petition does not meet or attempt to meet any of the criteria for granting certiorari established by Rule 10.1 of the Rules of the Supreme Court. The decision on appeal is

not "in conflict with the decision of another United States court of appeals on the same matter"; it did not decide "a federal question in a way that conflicts with applicable decisions of this Court"; and it does not present "an important question of federal law."

Rather, the Petition seeks review of a discretionary, fact-specific ruling in an unusual and idiosyncratic case. Such a question is generally inappropriate for review on certiorari. For several reasons, review is particularly inappropriate in this case.

First, the Question Presented is not really presented by the record. It assumes that the sole basis for the decision below was the failure of lead counsel to sign a motion for reinstatement of the case to the docket. This is not the case. Rather, the Magistrate recommended dismissal only when Petitioners failed to comply with Court deadlines after repeated instructions and a final warning. The trial court adopted the recommendation because of the pattern of "dilatory management," which it noted in both its December 1992 and February 1993 rulings. The Court of Appeals affirmed because Petitioners "engaged in over three years of missed deadlines," filed "woefully inadequate" documents, and failed to comply with court-established filing deadlines even after "notice their action was in jeopardy."

Second, having properly dismissed the case under Rule 41(b), the Court had no obligation whatsoever to reinstate the case to the docket. The December 1992 Order indicated only that the Court would "consider" reinstatement

if Petitioners could satisfy the Court that the case could proceed in an orderly fashion. A statement that the Court might exercise discretion and give the Petitioners yet another break hardly obligated the Court to do so.

Third, the Motion to Reinstate filed by Petitioners manifestly did not satisfy the intent of the Court's offer to consider reinstatement. The Motion advised the Court that "lead counsel" would be temporarily unable to participate in the litigation due to unspecified "international commitments," which apparently were more important to lead counsel than prosecuting this case. This hardly indicated a change in the attitude which had permeated Petitioners' prosecution of the case during the preceding four years. Moreover, certification of prospective compliance by an attorney who would only temporarily serve as lead counsel hardly assured the Court that the case would be diligently prosecuted on an ongoing basis. Further, the certification only represented that "procedures *will be* established to ensure that similar situations will not occur." After four years, such procedures still were not in place. Under these circumstances, it is understandable that the Court noted lead counsel had not even made the effort to sign the requested certification.. Therefore, not only does the Petition fail to raise an important question of federal law, but also, the Court's decision denying the Motion to Reinstate was not an abuse of discretion.

CONCLUSION

For reasons set forth herein, and each of them, Respondents respectfully submit that the Petition should be denied.

Respectfully submitted,

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